

NO. 85408-4

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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MICHAEL GENDLER,

Respondent,

v.

JOHN BATISTE, WASHINGTON STATE PATROL CHIEF and  
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,

Petitioners.

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**PETITIONERS' ANSWER TO AMICI BRIEFS**

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## **I. INTRODUCTION**

The history of the 1966 Federal Highway Safety Act and the changes it mandated for the creation, collection, and compilation of collision reporting is central to the proper resolution of this case. The amici briefing submitted on behalf of the cities and counties "Risk Pools" correctly expounds on the history previously provided by the State, including how the federal mandate for sophisticated collision analysis created an unintended increase in tort exposure for State and local governments and the consequent enactment of 23 U.S.C. § 409. CP 192-95.

The amici briefing submitted on behalf of the newspapers and WSAJF fails to address, or even to recognize, fundamental differences in collision reporting and analysis between the WSP and WSDOT. This leads the amici newspapers and WSAJF to a critical misunderstanding of the differences between what the WSP has historically done with collision reporting since 1937 and what WSDOT was required to do with collision reporting beginning in 1966 in order to comply with 23 U.S.C. § 152.

Most critically, the WSP has never had the ability nor the law enforcement need to be able to identify and compile collision reports by precise location. CP 194, 203. The assertion by the plaintiff and his supporting amici that the WSP has ever possessed the ability to identify

and compile collision reports by precise location is the central factual premise of the plaintiff – and it is wholly without support in the record.

The ability to identify and produce a compilation of collision reports by precise location has only existed since 1966 and is due solely to the requirement for WSDOT to comply with the federal standards mandated by 23 U.S.C. § 152. CP 193-94. It is undisputed that a request for collision reports at a location as precisely defined as collisions on the Montlake Bridge is a request that is identifiable only by WSDOT after performing its § 152 analysis. CP 196, 203. Such a request is not a request for an identifiable record when submitted to the WSP. CP 193-94, 203.

## **II. ARGUMENT**

### **A. Because A Request For Collision Reports At A Precise Location Becomes Identifiable To The State Only After WSDOT Performs Its § 152 Analysis, The Compilation Of Identified Collision Reports Are Within The § 409 Privilege**

There are more than 950,000 collision records residing in the State's integrated collision database (the "Data Mart"). CP 202. The raw collision reports from the field are fed into the database by the WSP with minimal coding that captures the names of the drivers involved in the collision, the date, and the roadway or county if included. CP 202. The WSP coding does not include information allowing an accurate

compilation of collision reports by precise location. CP 193, 202-03. WSP can only retrieve collision reports based on the limited coding that was done when WSP input the record into the database. CP 202.<sup>1</sup> Accordingly, the plaintiff's request for collision reports for accidents on the Montlake Bridge or at any other specific location is not an identifiable request when submitted to the WSP. Specific accident location is only created after scanned collision reports are analyzed and corrected by the collision analysts at WSDOT and the precise accident location information is entered into the WSDOT collision database for federal purposes. CP 193-96.

Through the Public Records Act (RCW 42.56), the plaintiff wants the WSP to compile the collision reports for the Montlake Bridge. This is the "one stop shopping" that § 409 was intended to prevent. *Pierce County, Washington v. Guillen*, 537 U.S. 129, 146, 123 S. Ct. 720, 154 L. Ed. 2d 610 (2003). (Congress did not intend § 152 to be an effort free tool in litigation against government). Prior to the 1966 Federal Highway Safety Act and its mandate for WSDOT to comply with the sophisticated demands of § 152 there was no ability for any State agency to compile

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<sup>1</sup> As explained by Ms. Johnson of the WSP Collision Records unit, even a manual search of the 950,000 collision reports would not yield an accurate compilation of all collision reports for collisions at the Montlake Bridge. This is due to errors and inconsistencies in the raw reports. An accurate compilation is only possible after WSDOT has performed its § 152 analysis. CP 193-95, 202.

collision records by precise location and hence no ability or risk for “one stop shopping” by tort plaintiffs. CP 193-94.

There is no evidence in this case that a compilation of collision reports for the Montlake Bridge is maintained by the WSP for any law enforcement purpose. Nor is there any evidence that a request for collision reports at a precise location is identifiable to the WSP. The ability to sort through the blizzard of collision reports in the database and identify the responsive reports by precise location exists only after WSDOT analyzes and corrects the raw reports received from WSP as part of its § 152 function. CP 193-94. Therefore, the compilation of reports that can be identified and produced in response to a request for collision records at a precise location are within the § 409 privilege.

In *Limstrom*, this court noted that the Public Records Act requires public agencies to produce *identifiable* records. *Limstrom v. Ladenburg*, 136 Wn.2d 595, 604, n.3, 963 P.2d 869 (1998) (emphasis in original). In *Limstrom*, the plaintiff sued a county prosecutor under the PRA arguing that the prosecutor should be required to cross reference its internal records in a manner that would allow retrieval of information in the form requested by the plaintiff. *Limstrom*, 136 Wn.2d at 603. Rejecting that argument, this Court stated:

On its face the [Public Records] Act does not require, and we do not interpret it to require, an agency to go outside its own records and resources to try to identify or locate the record requested.

*Limstrom*, 136 Wn.2d at 605, n.3.

Under *Limstrom*, a request for collision reports for the Montlake Bridge is not a request for an identifiable record when submitted to the WSP because the WSP can only identify the specific compilation of requested records by relying on the resources of another agency – in this case WSDOT and its protected § 152 capability.

To be clear, it is not the State's argument that the WSP should not have to produce the compilation of collision reports sought by Mr. Gendler because it is too onerous to sort through 950,000 records. Rather, it is because the precision of the compilation of collision records as requested is not identifiable to WSP. There is absolutely no evidence that WSP has the independent capability or law enforcement need to be able to compile collision records with the location precision sought by Mr. Gendler in his PRA request. CP 8. Significantly, the Legislature has never required WSP to be able to report collisions by precise location in complying with reporting required by RCW 46.52.060. CP 9-10.

Under *Limstrom's* interpretation of the PRA, the WSP should not be required to build a computer capacity for compiling location specific



collision reports that serves no independent law enforcement need and that the legislature has not required. *See Limstrom*, 136 Wn.2d at 605, n.3.

The amici briefing submitted on behalf of the newspapers presents a few anecdotes and arguments for the salutary public purposes that access to location specific collision reports can yield.<sup>2</sup> However, that argument fails to recognize that § 409 does not bar access for any of the purposes championed by the newspapers. Congress has foreclosed access to § 152 protected collections and compilation of data only when sought for use against the government in an action for damages. *See* 23 U.S.C. § 409. Access to the protected database is not barred by § 409 when information is being sought to publish in the media or to spark public commentary and debate.

The request for WSP to develop the capability to produce a location specific compilation of collision reports, duplicating a capability that already exists within WSDOT, can thus be seen as creating a capability whose sole purpose is the circumvention of § 409.

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<sup>2</sup> Notably, the amicus brief submitted by the Newspaper group fails to address the State's argument that the plain language of RCW 46.52.080 and .083 make all required accident reports confidential, except for use by specific agencies and interested parties. *See* Supplemental Brief of Petitioner State of Washington, pp. 16-20, citing Op. Att'y. Gen. 24 Biennial Report at 226 (1937-38) (Opinion attached hereto as Attachment C).

**B. The MOU Did Not Eliminate A Collision Reporting Capability That Was Previously Possessed By The WSP**

The concern of the newspapers and WSAJF amici regarding the Memorandum of Understanding (MOU) stems from their misunderstanding of collision reporting done by the WSP prior to execution of the MOU. Consistent with the assertion of the plaintiff, the amici argue that prior to the MOU precise location collision reports were being produced by the WSP and that the MOU is a nefarious attempt to shift the precision location reporting to an agency that could hide it under § 409.

As explained above, this assertion stems from the erroneous premise that the WSP has ever reported or compiled collision reports by precise location. The only collision reporting done by the WSP is the reporting that began in 1937 as directed by the Legislature in RCW 46.52.060. There is no evidence that reporting has ever included an ability to compile collision reports by precise location. CP 193-94. The WSP's report is publically available and an example of that report can be found at [www.wsdot.wa.gov/mapsdata/collision/pdf/Washington\\_State\\_Collision\\_Data\\_Summary\\_2009.pdf](http://www.wsdot.wa.gov/mapsdata/collision/pdf/Washington_State_Collision_Data_Summary_2009.pdf).

In 1966 WSDOT began building its capacity to report collision data at the level of sophistication required to meet the federal § 152

standards. CP 193. This effort included major changes to the traffic collision report forms in order to gather the raw data needed for WSDOT to perform its analysis. CP 194. Accordingly, for 30 years from 1966 through 1996 both the WSP and WSDOT were involved in collecting and reporting collision data although at very different levels of sophistication.

In 1997 WSP's collision data computers failed during the attempt to switch to an optical scanner system. CP 194-97. Rather than spending money to rebuild WSP's system, the legislature shifted funding away from WSP and directed WSDOT to perform the collision reporting that WSP had previously been doing. *See* Laws of 2001 Supplemental, ch. 14, L 01, E2, PV, Program T n.6. (Attachment A). In 2003 the Legislature authorized the WSP and WSDOT to enter into an MOU for reimbursement of WSDOT for activities previously performed by WSP. *See* Laws of 2003, ch. 360, L 03, PV § 222, n.8. (Attachment B).

The MOU represented a common sense efficiency in collision reporting. The WSDOT already had in place a collision analysis and reporting capability that was vastly superior to what WSP previously used and, therefore, WSDOT was able to produce the RCW 46.52.060 report within its existing computer capacity (although WSP still has to pay for it). CP 194-97. There is nothing nefarious about the transfer reflected in the MOU. An ability to compile collision reports by precise location did

not exist within WSP prior to the MOU and was not, therefore, nefariously transferred to WSDOT via the MOU.

**C. Noerr-Pennington Doctrine Does Not Change The Unambiguous Mandate Of 23 U.S.C. § 409**

The newspapers' invocation of the *Noerr-Pennington* doctrine is inapposite. The *Noerr-Pennington* doctrine provides that those who petition government for redress are immune from statutory liability for their petitioning conduct. However, in this case no one is seeking to impose liability against Mr. Gendler for having brought this lawsuit. The newspapers cite to the case of *Sosa v. DIRECTV, Inc.*, 437 F.3d 923 (9th Cir. 2006) for the proposition that federal statutes generally must be construed to avoid burdening petition activity, and specifically assert 23 U.S.C. § 409 must be construed to avoid burdening the right of accident victims like Gendler to pursue lawsuits based on their accident. *See Amicus Curiae Brief of Allied Daily Newspapers of Washington and Washington Newspaper Publishers Association in Support of Respondent*, at 9-10.

However, the "burden" that the *Noerr-Pennington* doctrine addresses is the imposition of liability on persons who engage in the petitioning of government for redress. The *Noerr-Pennington* doctrine protects the rights of persons to engage in the process of petitioning the

government for redress, but does not apply as a mechanism to drive the outcome of the petition. *Manistee Town Center v. City of Glendale*, 227 F.3d 1090, 1095 (9th Cir. 2000). In this case, there is no claim that Mr. Gendler's right to petition for redress is burdened by § 409. The newspapers' erroneously urge the application of the *Noerr-Pennington* doctrine not to protect the process of petitioning, but as a means to remove statutory obstacles to a desired outcome. Such an application is clearly improper. *Manistee*, 227 F.3d at 1095. The *Noerr-Pennington* doctrine simply does not apply as a means to assist a tort claimant in avoiding the application of a statutory evidentiary privilege such as 23 U.S.C. § 409. *See Sosa*, 437 F.3d at 931.

### III. CONCLUSION

The determinative facts in this case are undisputed – the specific accident location information sought by Mr. Gendler for his tort lawsuit was not created, collected, or compiled by WSP for a law enforcement purpose. Instead, the ability to identify collision reports by specific accident location exists only pursuant to the Federal Highway Safety Act of 1966, and 23 U.S.C. § 152. In *Pierce County*, 537 U.S. at 144, the Supreme Court of the United States held:

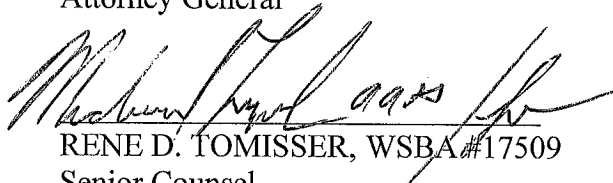
[A]n accident report collected only for law enforcement purposes and held by the county sheriff would not be protected under § 409 in the hands of the county sheriff,

even though that same report would be protected in the hands of the Public Works Department, so long as the department first obtained the report for § 152 purposes.

Because precise compilation of collision reports sought by Mr. Gendler never existed within the possession of WSP and can only be created by WSDOT's § 152 database, the federal privilege in § 409 applies. The contrary decision of the Court of Appeals should be reversed.

RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of September,  
2011.

ROBERT M. MCKENNA  
Attorney General

  
RENE D. TOMISSER, WSBA #17509  
Senior Counsel

### CERTIFICATE OF SERVICE

I certify under penalty of perjury in accordance with the laws of the State of Washington that on the date below *Petitioners' Answer to Amici Briefs* and this *Certificate of Service* were hand delivered and filed in the Washington State Supreme Court.

Further, that I served a copy of *Petitioner's Answer to Amici Briefs* and this *Certificate of Service* on counsel for Respondent at the address below by U.S. Mail, and by e-mail as a PDF attachment:

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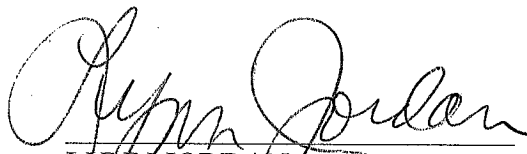
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DATED this 28<sup>th</sup> day of September, 2011, at Tumwater,  
Washington.

  
LYNN JORDAN



**Department of Transportation**  
**Program T - Transportation Planning, Data, & Research**

**Total Appropriated Funds**

(Dollars in Thousands)

	<u>Enacted</u>
<b>1999-01 Expenditure Authority</b>	<b>28,830</b>
2001 Supplemental *	0
<b>Total 1999-01 Biennium</b>	<b>28,830</b>
<b>2001-03 Maintenance Level</b>	<b>31,359</b>
<b>Policy Changes</b>	
1. Freight Movement Study	500
2. Transportation Planning	6,754
3. Time Collection Automation System	-19
4. General Inflation	-261
5. Administrative Reductions	-900
6. Collision Reporting Project	2,740
7. Reapprops from 1999-01 Biennium	100
8. Reduction & Funding Realignment	-236
9. Lapse: 2ESSB 5749	-6,754
<b>Total 2001-03 Biennium</b>	<b>33,283</b>

**Comments:**

This program manages, coordinates, and supports the multimodal transportation planning, data, and research needs of the Department. Planning activities include coordinating long-range plan development, working jointly with local jurisdictions and administering pass-through funds. Data and research activities support the construction program.

- Freight Movement Study** - Funding is provided for the Department to work with the Transportation Research Center to conduct an origin and destination study to determine the impacts of trade-related truck traffic and other freight impacts on the transportation system. (Motor Vehicle Account-State)
- Transportation Planning** - Funding is provided solely for the implementation of 2ESSB 5749 in the form enacted by the Legislature. Second Engrossed Substitute Senate Bill 5749 was not enacted, so funds will lapse as shown in item 9. (Motor Vehicle Account-State)
- Time Collection Automation System** - Funding is shifted to the Transportation Management and Support Program (Program S) to provide for the automation and maintenance of an efficient timesheet completion and approval process. System development will be funded within existing agency resources by having each affected program reduce ongoing base operating costs. (Motor Vehicle Account-State)
- General Inflation** - General inflation added within the maintenance level is removed in the policy level. (Motor Vehicle Account-State, Motor Vehicle Account-Federal, Multimodal Transportation Account-State)

- Administrative Reductions** - Funding is reduced by \$700,000 for pass-through funds to Regional Transportation Planning Organizations (RTPOs). This funding is used for regional coordination in updating the Washington Transportation Plan. An additional \$200,000 is reduced in administrative costs. (Motor Vehicle Account-State)
- Collision Reporting Project** - Funding is provided to complete the Collision Reporting System at the Department of Transportation (DOT), including the process of entering accident reports in the system from 1997 for the state, cities, and counties. Beginning on July 1, 2003, DOT will be responsible for the complete collision reporting processes for the state of Washington, at which time the Washington State Patrol's five positions and staff handling accident report requests will be transferred to DOT along with the existing funding (\$1.45 million) and revenue associated with the collision reporting processes. (Motor Vehicle Account-State)
- Reapprops from 1999-01 Biennium** - Reappropriation of funding is made within the Transportation Planning Program to complete the modal tradeoff model research. One-time funding of \$350,000 was provided in the 1999-01 biennium to develop an analytic method for comparing investment results in different modes or strategies, such as highways, passenger rail, freight rail, and transit. It is anticipated that only \$250,000 of the 1999-01 biennium appropriation will be spent, resulting in a \$100,000 underrun in program spending. This appropriation will direct the 1999-01 biennium savings back into the research project in order for the total \$350,000 to be used for the intended purposes. (Motor Vehicle Account-State)

**Department of Transportation**  
**Program T - Transportation Planning, Data, & Research**

Total Appropriated Funds

(Dollars in Thousands)

	<u>Enacted</u>
<b>2001-03 Expenditure Authority</b>	<b>33,283</b>
<b>2003-05 Maintenance Level</b>	<b>32,026</b>
<b>Policy Changes</b>	
1. Collision Reporting - Prog. Realign	2,400
2. Congestion Relief Modeling	3,800
3. RTPO planning	2,000
4. RTID Support	3,000
5. RTID Project Estimate Reviews	5,000
6. Local Collision Records Backlog	650
7. Reappropriation for SAFTA	60
8. Reverse Collision Records Transfer	-1,440
9. Functional Class Database	-140
10. GPS Training	-225
11. Region & System Planning Reductions	-753
12. Program Admin & Support Reduction	-166
13. Statewide Collision Records System	2,740
14. Funding Realignment	0
15. Transfer TEP Staff	-983
16. Revolving Funds	40
17. Staff Reduc. & Oper. Efficiencies	-110
<b>Total 2003-05 Biennium</b>	<b>47,899</b>

**Comments:**

The Transportation Planning, Data, & Research Program manages, coordinates, and supports the multimodal transportation planning, data, and research needs of the Department. Planning activities include coordinating long-range plan development, working with local jurisdictions, and administering pass-through funds. Data and research activities support the construction program.

- 1. Collision Reporting - Prog. Realign** - Funding is transferred from the Safety Improvement program (I2) to consolidate all program costs associated with the Collision Reporting System. (Motor Vehicle Account-State)
- 2. Congestion Relief Modeling** - Funding is provided for a study of regional congestion relief solutions for Puget Sound, Spokane, and Vancouver. The study will provide proposals to alleviate congestion consistent with population and land use expectations under the Growth Management Act. (Motor Vehicle Account-State)
- 3. RTPO planning** - Funding is provided for additional assistance to the Regional Transportation Planning Organizations (RTPO) and long-range planning efforts. (Motor Vehicle Account-State)
- 4. RTID Support** - Funding is provided to assist with the costs of the election and WSDOT project oversight. (Motor Vehicle Account-State)

- 5. RTID Project Estimate Reviews** - Funding is provided for an external review of Regional Transportation Investment District (RTID) project costs estimates in order to provide the best available estimate of cost maximizing the use of RTID funds while ensuring that projects will not overrun estimates. (Motor Vehicle Account-State)
- 6. Local Collision Records Backlog** - Funding is provided to complete the processing and analysis of the local collision record backlog. A portion of the state supervision funds identified in RCW 46.68.110(1) and 46.68.120 (3) are eligible for use in providing collision reporting processing and analysis for cities and counties. (Motor Vehicle Account-State)
- 7. Reappropriation for SAFTA** - Reappropriations are made for expenditures moved from the 2001-03 biennium to the 2003-05 biennium for Strategic Freight Transportation Analysis. (Motor Vehicle Account-State)
- 8. Reverse Collision Records Transfer** - In anticipation of collision records reform legislation (SSB 5499), the agency included funding in its base budget that was previously appropriated to the Washington State Patrol. With the failure of SSB 5499, the funding is eliminated from the WSDOT's base budget. The agency is encouraged to enter into an inter-agency agreement for reimbursement for the activities assumed from the Washington State Patrol. (Motor Vehicle Account-State)

**Department of Transportation**  
**Program T - Transportation Planning, Data, & Research**

9. **Functional Class Database** - Funding is reduced through efficiency savings in functional class database maintenance. Additional work was completed in the 2001-03 biennium to update the Functional Class database. These upgrades allow for the reduction of work effort needed to maintain the database in the 2003-05 biennium. (Motor Vehicle Account-State, Motor Vehicle Account-Federal)
10. **GPS Training** - Funding is eliminated for global positioning system (GPS) training for mapping-grade data collection. The Transportation Data Office (TDO) is responsible for providing training of regional staff in the use of GPS. Elimination of these funds from the TDO does not preclude continuation of the training if performed on a completely charge-back basis as long as the regions could cover the costs within their existing base budgets. (Motor Vehicle Account-State, Motor Vehicle Account-Federal)
11. **Region & System Planning Reductions** - Funding is reduced for transportation planning and the strategic assessment effort. (Motor Vehicle Account-State, Motor Vehicle Account-Federal)
12. **Program Admin & Support Reduction** - Funding is reduced for two positions eliminated as a result of consolidation and cross training. (Motor Vehicle Account-Federal)
13. **Statewide Collision Records System** - Funding is provided to manage and maintain a statewide collision records system. The Department has the responsibility of processing and analyzing all accidents reports occurring on all roads and highways in the state. Analysis of this information assists cities, counties, and the Department in prioritizing their road projects. Due to problems in implementing the Collision Reporting and Statistical History (CRASH) program at WSP, collision reports were not analyzed for at least three years, from 1997 to 2000. In the 2001-03 biennium, the Legislature directed the Department to design a system and process that could analyze all reports. In addition, funds were appropriated to eliminate the backlog that accumulated between 1997 and 2000. The Department's appropriation in the 2003-05 biennium is to process and analyze all citizen, city, county, and state highway collision reports. (Motor Vehicle Account-State)  
  
It is the intent of the Legislature that funding the costs associated with the collection, compilation, tabulation, analysis, and publication of accidents reports, police officer and investigator reports, and other reports required by Chapter 46.52 RCW shall not impair or impinge on any party's rights under the state public disclosure laws as provided in Chapter 42.17 RCW.
14. **Transfer TEP Staff** - Funding for Transportation and Economic Partnership (TEP) staff and funding is moved back to the TEP program (Program K). (Motor Vehicle Account-State)
15. **Revolving Funds** - Funding is provided for labor and industries rate increases. (Motor Vehicle Account-State)
16. **Staff Reduc. & Oper. Efficiencies** - Funding and staffing levels are reduced for efficiencies that are expected in program administration, management, and operation. (Motor Vehicle Account-State)

STATE OF WASHINGTON

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**Twenty-Fourth Biennial Report**

OF THE

**ATTORNEY GENERAL**

**G. W. HAMILTON**

Attorney General

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**1937-1938**

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OLYMPIA  
STATE PRINTING PLANT  
1938

**ATTACHMENT** c

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**Motor Vehicle Accident Reports—Not Public Records**

Olympia, Wash., October 27, 1937.

Hon. Harry H. Johnston, Prosecuting Attorney of Pierce County,  
Court House, Tacoma, Washington.

Dear Sir: On the 20th inst., you wrote this office requesting an opinion concerning the proper construction to be given to section 140, chapter 189, Laws of 1937. You say in your letter:

"A representative from the Department of Labor & Industries has requested the Sheriff of this county to permit him to see an accident report made as required to the Sheriff. The Department of Labor & Industries is interested in seeing the report for the purpose of building up a lawsuit and using the report, or parts thereof, as evidence in a civil action. The Sheriff has been advised by this office to refuse to give the Department of Labor & Industries an opportunity to examine the accident report. This opinion was based on Section No. 140 of the Highway Code Session Laws of 1937. It is important to have a ruling on this matter by your office.

"What is meant by 'Commission as authorized by law?' Would the Department of Labor & Industries be such a commission? I am satisfied in my own mind that the report could not be used in any trial but I am writing for the satisfaction of the state department."

We find that section 140 of the said chapter 189 relates back to several prior sections of the chapter. Sections 133, 134 and 135 relate to certain duties required of the operator of a vehicle which becomes involved in a collision with another vehicle on the road. One of those requirements is that the operator of any vehicle involved in an accident resulting in injury to a person or to property or in the death of anyone shall within twenty-four hours after the accident make a written report to the proper official as specified in said section. It is further provided that forms or blanks be furnished for use in making out such reports. These forms must be approved by the chief of the Washington state patrol. Section 138 makes it the duty of the Washington

state patrol to tabulate all accident reports and publish the same annually and further provides:

"Such accident reports and analysis or reports thereof shall be available to the directors of the departments of highways, licenses, public service \* \* \* for further tabulation and analysis for pertinent data relating to the regulation of highway traffic, highway construction, vehicle operators and all other purposes \* \* \*"

Section 139 requires that any officer in the state of Washington either in the official employ of the state, county, city, or other political subdivision who may be present at the scene of an accident, in any capacity, shall make a report thereof in the same manner and to the same parties as is required of a party involved in an accident.

Then it is set out in section 140:

"All required accident reports and supplemental reports and copies thereof shall be without prejudice to the individual so reporting and shall be for the confidential use of the county prosecuting attorney and chief of police or county sheriff, as the case may be, and the director of licenses and the chief of the Washington state patrol, and other officer or commission as authorized by law, except that any such officer may disclose the identity of a person reported as involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident. No such accident report or copy thereof shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that any officer above named for receiving accident reports shall furnish, upon demand of any person who has, or who claims to have, made such a report, or, upon demand of any court, a certificate showing that a specified accident report has or has not been made to the chief of the Washington state patrol solely to prove a compliance or a failure to comply with the requirement that such a report be made in the manner required by law."

Chapter 189 is entitled Washington Motor Vehicle Act. The title states that it is an act relating to vehicles, and the operation thereof upon the public highways of the state. The sections just quoted are all found in what is termed "CHAPTER X, ACCIDENTS." It is obvious that all the things embraced in this section X (or "chapter X" as it is called) relate entirely to regulations for aiding those injured in accidents and establishing the facts out of which such accidents arose,—all to the end that traffic on public highways may be made safer thereby. All the reports provided are for "the confidential use" of:

The county prosecuting attorney,  
The chief of police,  
The county sheriff,

The director of licenses,

The chief of the Washington state patrol.

These are officers charged with the enforcement of traffic rules and regulations and punishment of those who may violate the same. All are peace officers except the director of licenses and the reports are available to him in the event he may wish to consult the same for the purpose of determining the giving of a license to a motorist or the withholding or cancellation of a license.

The prosecuting attorney is entitled to "the confidential use" of the reports in any case where he is considering the advisability of a prosecution for violation of the traffic laws and the peace officers named in the statute may use these reports for the purpose of collecting evidence and contacting witnesses. The fact is too obvious for argument that the entire intent and purpose of the law is to apprehend and punish those guilty of violating the rules of the road and also to secure aid and assistance for those injured as a result of highway accidents.

In enacting this section, the legislature was not attempting to provide manners and means for the assembling of facts to be used in a civil suit. No private individual could demand the right to examine these reports. When the state brings suit, although acting in its sovereign capacity, still it is limited to the same procedure outlined and fixed for private litigants. The rules of evidence do not change, and the manner of procuring witnesses remains the same.

Inasmuch as section 140 names the officers entitled to the confidential use of these reports and omits from the list the department of labor and industries, it requires strong and convincing argument to show the department has any such right. From the facts set out above it appears to us that no such argument may be adduced.

We think that you have advised the sheriff correctly that he is not authorized to submit these reports to the department of labor and industries and that he is not authorized to submit them to any persons except those particularly named in section 140.

You also ask in your letter,—“What is meant by ‘commission as authorized by law’?” This certainly is a vague expression. It cannot be said to be ambiguous because it does not fix any

definite idea. However, we think that the legislature first named the parties directly interested in the reports in question and then, by this inclusion "and other officer or commission as authorized by law," thereby meant to extend the privilege to another person or commission who by any prior law was given access to reports of such character. This is as near as we can come to interpreting that phrase. We conclude that it is immaterial so far as this opinion is concerned for the reason that there is not now nor has there ever been any statute granting to the department of labor and industries the right to the use and benefit of reports made on traffic accidents.

We concur in your opinion given to the sheriff as mentioned above. We can only hold that these reports are intended only for the persons particularly mentioned in the statute and that any officer in giving out information concerning the same would be violating his duty.

G. W. HAMILTON, *Attorney General*.

By BROWDER BROWN, *Asst. Attorney General*.

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